IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.MC.No. 3199 of 2007()

CC.530/2005 of JUDL. MAGISTRATE OF FIRST CLASS, KOTTAYAM

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PETITIONER: ACCUSED:-

GEORGE THOMAS, S/O LATE MUTHOOT M.GEORGE
MUTHOOT HOUSE, BAKER HILL, KOTTAYAM

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS: COMPLAINT & STATE:-

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1. DR. V.K. SURESH, AGED 57,
S/O KARUNAKARAN, VAZHAPARAMBIL HOUSE,
KODIMATHA KARAYIL,
MUTTAMBALAM VILLAGE, T.B. ROAD,KOTTAYAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. M.S. BREEZ.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 3199 OF 2007

Dated this the 18th day of October, 2007

ORDER

The petitioner faces indictment in a prosecution initiated by the 1st respondent/complainant for the offences punishable, inter alia, under Sec.420 of the IPC. The petitioner - as the Managing Partner of a partnership, had filed a prosecution under Sec.138 of the Negotiable Instruments Act against the said complainant. The petitioner had also filed a civil suit against the said complainant. The prosecution has ended in conviction and the civil court has already decreed the civil suit, it is submitted. According to the petitioner, the private complaint filed by the 1st respondent is only as a retaliation and counter blast against these steps taken by the petitioner against the complainant. The learned Magistrate has already taken cognizance. The petitioner has already appeared before

the learned Magistrate. The proceedings are pending as C.C.No.530/05. The petitioner, at this stage, has come to this Court with this petition to invoke the powers under Sec.482 of the Cr.P.C. to quash the criminal complaint initiated against him. According to the petitioner, the allegations are false and the materials presently available and the evidence rendered in the case referred above would expose the falsity and untenable nature of the complaint filed by the complainant.

2. Cognizance has already been taken. The matter has been pending for a last about 2 years before the learned Magistrate. The petitioner has already entered appearance also. I am of opinion that, in these circumstances, it is not necessary for this Court to invoke the powers under Sec.482 of the Cr.P.C. I have perused the records. It is certainly for the petitioner to stake a claim before the learned Magistrate for discharge under Sec.245(2) of Sec.245(1) of the Cr.P.C. as the case may be.

3. The Code of Criminal Procedure contemplates the premature termination of the proceedings when the allegations are groundless (Sec.245(2)) or when the complainant is not in a position at the first stage to adduce such evidence which if unrebutted would warrant his conviction (Sec.245(1) Cr.P.C.).

Ordinarily and normally an accused person must resort to those provisions of the Code to claim premature termination of the proceedings. Not that this Court will not have jurisdictional competence in an appropriate case under Sec.482 of the Cr.P.C. to quash the proceedings, but that must be a very rare and exceptional case in which such powers can be invoked. Has there been failure or miscarriage of justice? Is there abuse of the process of court? These are the questions the court will consider when the court is requested to invoke the powers under Sec.482 of the Cr.P.C.

4. I do not intend to express any opinion on merits on the disputed questions. Suffice it to say that I do not find any reason to justify the invocation of the jurisdiction under Sec.482 of the Cr.P.C. It is for the petitioner to claim discharge before the learned Magistrate at the appropriate stage. The learned Magistrate, needless to say, must consider the claim for discharge under Sec.245(1) or (2) of the Cr.P.C. as the case may be when such request is made.

5. The learned counsel for the petitioner submits that if unnecessary insistence on personal appearance of the petitioner were made, that would work out great hardship and difficulties for the petitioner. I find no reason why such insistence on

personal appearance must be made by a criminal court on days when the petitioner's personal presence is not necessary for further progress of the case. It is for the petitioner to appear through counsel until the stage of framing charge. Till then the personal appearance of the petitioner is unnecessary and need not be insisted by the learned Magistrate.

6. With the above observations, this Crl.M.C. is dismissed.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge